DeclarationReply.doc

DECLARATION OF DEFENDANTS IN SUPPORT OF DEFENDANT'S REPLY - 1

Honorable Ricardo S. Martinez

## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHRISTIE BOWERS,	) Case No.: C08-1/68RSM
Plaintiff,	<ul> <li>DECLARATION OF DEFENDANTS IN</li> <li>SUPPORT OF REPLY TO MR.</li> <li>CAVAGNARO'S MEMO IN OPPOSITION</li> </ul>
vs. ROBIN KLETKE and ROBIN COHEN,	) TO DEFENDANT'S MOTION FOR ) MONETARY SANCTIONS
husband and wife and the marital community composed thereof,  Defendants	) ) NOTE ON MOTION DOCKET: APRIL 2, 2010

Defendants, Robin Kletke and Robin Cohen declare as follows:

- 1. We are the defendants in the above referenced case and are filing this declaration pro se and have direct knowledge of the facts declared herein and we are competent to testify hereto.
- 2. The spread sheet referenced in DKT #66, Exhibit A is a true and correct spread sheet produced by the defendants in order to summarize time charges in DKT #66, Exhibit B. The spread sheet contains dates, hours worked (by Mr. Murphy and his paralegal), charges for those hours and a brief description of the work involved. The defendants have transferred the data from Exhibit B to the spread sheet, and added descriptions. In some cases, the charges on the time sheets included items not attributable to Mr. Cavagnaro. In those instances, the defendants have estimated what portion of the time

charges would have been applicable. A notation was made on the time sheet (i.e. 1.0 hr) in those instances.

- 3. Exhibit B of DKT #66 is a collection of true and correct time sheets received from Mr. Murphy in the normal course of business. These time sheets have been redacted where necessary to remove non-applicable entries. Where entries for a day contain a mixture of activities, the non-applicable descriptions are redacted and an estimate of hours spent on the applicable activity is hand written in the right hand margin. Hand written notations A-N are also in the right hand margin to help group activities together. These designators A-N are transferred to the spread sheet in Exhibit A of DKT #66 to aid in summarizing the charge entries and total expenses.
- 4. Attached hereto as Exhibit A are true and correct copies of emails received by the defendants from Mr. Murphy during the normal course of business. As can be seen by the 'CC' line in the address, the email for the defendants (<u>r2agility@verizon.net</u>) was added so the emails would be received along with Mr. Cavagnaro.
- 5. Attached hereto as Exhibit B is a true and correct copy of a letter from Mr. Murphy to Mr. Cavagnaro on November, 6, 2009. This letter was received as part of routine distribution of communications pertaining to the case. In this instance, the letter discusses the responsive documents, the copying of those documents, and delivery to the defendants.
- 6. Attached hereto as Exhibit C are true and correct copies of monthly statements received by the defendants from Mr. Murphy in the normal course of business. These statements show what charges were incurred in each month, the current balance owed, and payments made by the defendants.
- 7. Attached hereto as Exhibit D are true and correct copies of check carbons from various checking accounts of the defendants. Two check carbons could not be located (check #91, 1/12/2010 for \$10,000.00 and check #6245, 2/27/2009 for \$10,000.00).

Defendants declare under penalty of perjury that the foregoing is true and correct.

Dated this \_\_2nd\_\_\_ Day of April, 2010 at Woodinville, WA

Robin Cohen

Robin Kletke

16820 226<sup>th</sup> Ave NE Woodinville, WA 98077 206-718-1237 robinkletke@hotmail.com

M Klos

DECLARATION OF DEFENDANTS IN SUPPORT OF DEFENDANT'S REPLY - 3 DeclarationReply.doc

1	CERTIFICATE OF SERVICE
2	We, Robin Kletke and Robin Cohen, herby certify that on April _2nd, 2010, we filed with the
3	Clerk of the Court via CM/ECF the foregoing DECLARATION OF DEFENDANTS IN
4	SUPPORT OF REPLY TO MR. CAVAGNARO'S MEMO IN OPPOSITION TO
5	DEFENDANT'S MOTION FOR MONETARY SANCTIONS as well as Exhibits A-D. Said
6	CM/ECF filing will send notifications of this filing to the following:
7	
8	Gregory Cavagnaro  Law Offices of Gregory Cavagnaro
9	1400 112 <sup>th</sup> Avenue SE #100 Bellevue, WA 98004
10	Lead Attorney for Plaintiff
11	Mark Walters
12	1411 Fourth Avenue, Suite 75 Seattle, WA 98101
13	Attorney for Plaintiff
14	We certify under penalty of perjury, under the laws of the State of Washington, that the
15	foregoing is true and correct.
16	Dated this _2nd Day of April, 2010 at Woodinville, WA
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18	In the Klos
19	Robin Cohen Robin Kletke
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DECLARATION OF DEFENDANTS IN SUPPORT OF DEFENDANT'S REPLY - 4 DeclarationReply.doc

# EXHIBIT A

**From:** "Greg Murphy" <gmurphy@murphy-legal.com> **To:** "Gregory P. Cavagnaro" <greg@gcavlaw.com>

Cc: "R2Agility" <r2agility@verizon.net>; "Lani Mertens" <lmertens@murphy-legal.com>

**Sent:** Friday, March 27, 2009 4:12 PM

Subject: Bowers v. Kletke & Cohen:Documents received from Sonsosite

### Dear Mr. Cavagnaro:

This email follows the voice mail message left for you today at 2:30 PM. This is in addition to the attempts made by my paralegal, Lani Mertens, since last week about this same subject.

A week ago you sent an email message to Lani Mertens telling her that you would be out of town on Monday and will be able to respond on Tuesday (3/24/2009). After not hearing from you on Tuesday, Lani Mertens sent you an email message on Wednesday morning.

It has been at least eight days since you received the documents from Sonosite. Please Bates stamp a complete set and send them to us in the same manner they were received by your office. Please confirm receipt of this email message and let us know when we can expect to receive the documents. Please let us know if you have already sent the documents. Thank you.

Sincerely, Gregory J. Murphy

## **Gregory J. Murphy**

Law Offices of Gregory J. Murphy, P.S.

Please Note New Street Address

One Pacific Building

621 Pacific Avenue, Suite 15

Tacoma, WA 98402

Mailing Address: P.O. Box 1298 Tacoma, WA 98401-1298

Direct Line: 253-572-4948/Cell Phone: 253-948-7565

### **WARNING:**

The information contained in this email message is only intended for the person(s) named above. In some instances, the information may be protected by the attorney-client and/or attorney work-product privileges. Any distribution or copying of the information is strictly prohibited if you are not the intended recipient.

**From:** "Greg Murphy" <gmurphy@murphy-legal.com> **To:** "Gregory P. Cavagnaro" <greg@gcavlaw.com>

Cc: "R2Agility" <r2agility@verizon.net>; "Lani Mertens" <lmertens@murphy-legal.com>

**Sent:** Tuesday, March 31, 2009 3:25 PM

Subject: FRCP 26 Conference, 10 am, Wednesday, April 1, 2009; Bowers v. Kletke & Cohen

### Dear Mr. Cavagnaro:

I will initiate the call to your office tomorrow morning for the purpose of conducting an FRCP 26 conference concerning the Sonosite documents obtained by your office. It is ridiculous that we have had to do anything at all after we requested a complete copy of the documents received by your office. We should have received the documents last week. After many attempts on our part to contact you, our emails and voicemails have still not received a substantive response.

I look forward to talking to you tomorrow morning. If this time is not convenient, please let me know what times you have available tomorrow to discuss this issue. Thank you.

## **Gregory J. Murphy**

Law Offices of Gregory J. Murphy, P.S.

One Pacific Building

621 Pacific Avenue, Suite 15

Tacoma, WA 98402

Mailing Address:

P.O. Box 1298

Tacoma, WA 98401-1298

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Cc: "R2Agility" <r2agility@verizon.net>; "Lani Mertens" <lmertens@murphy-legal.com>

**Sent:** Wednesday, April 01, 2009 11:17 AM

Subject: FRCP 26 and FRCP 37/Failure to Meet and Confer re Sonosite Documents; Bowers v. Kletke and

Cohen, USDC, WD of WA at Seattle, 08-cv-01768-RSM

### Dear Mr. Cavagnaro:

It is customary to resolve discovery matters by agreement and Judge Martinez's March 17, 2009 Order Setting Trial and Related Dates requires us to do so if possible. Despite our repeated requests, we have not received either the documents produced by Sonosite pursuant to the subpoena duces tecum issued by your office **OR** any communication whatsoever about when we will receive the documents.

We understand that Sonosite produced documents on or about March 17, 2009. Lani Mertens, my paralegal, called and left a message for you on March 19, 2009 requesting a copy of the documents produced. I called and left a message for you on March 30, 2009 on this same subject and also told you if I did not either receive the documents or hear from you, I would schedule an FRCP 26 conference. However, I note under the federal rules of civil procedure, unlike the state rules, the rule specified is FRCP 37. Nevertheless, for our purposes, it is my position that I have complied with the provisions of FRCP 37 and I will be certifying to the court that I have attempted to confer with you.

When I called today at 10 am per my email to you yesterday, I was told you were meeting with a client. I asked your assistant to tell you I was calling about the FRCP 26 conference and I was told you knew that and you were not available. I then asked her to let me know when you would be available today and she said she did not keep your calendar or have access to it. I asked her again to ask you when we could "meet and confer" today: give me a time. I was told you would call me. This is unacceptable.

We will file a Motion to Compel Discovery and Sanctions. Please contact me if you have any questions. Thank you.

Sincerely,

Gregory J. Murphy

## **Gregory J. Murphy**

Law Offices of Gregory J. Murphy, P.S.

One Pacific Building

621 Pacific Avenue, Suite 15

Tacoma, WA 98402

Mailing Address:

Filed 04/02/2010 Page 9 of 33

P.O. Box 1298

Tacoma, WA 98401-1298

Direct Line: 253-572-4948/Cell Phone: 253-948-7565

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## EXHIBIT B

Gregory J. Murphy P.S.

P.O. Box 1298 One Pacific Building 621 Pacific Ave., Suite 15 Tacoma, WA 98401-1298 (253) 572-3688 fax (253) 572-9588 www.murphy-legal.com

November 6, 2009

### VIA ELECTRONIC MAIL

Gregory P. Cavagnaro Law Office of Gregory P. Cavagnaro 1400-112<sup>th</sup> Ave SE, Suite 100 Bellevue, WA 98004

RE: Bowers v. Kletke & Cohen

Dear Mr. Cavagnaro:

I called you this morning to discuss your November 5, 2009 letter. I was told you were in a meeting and was transferred to your voicemail. Your phone system said your voicemail was not available.

I appreciate your client's offer to bring documents consisting of several thousand pages to our office on either Monday or Tuesday next week. For several reasons this is not acceptable to us. One of the reasons is the fact that we do not want any contact with your client unless you or someone from your office is present.

Instead, please make arrangements to have the documents delivered to our office by someone other than your client. Given the volume of documents, our preference is to receive scanned documents on a disk. Otherwise, please have the documents copied at Kinko's or some other copy service. Your client's cost for 2,000 pages of documents would be somewhere between \$153.00 - \$612.00 according to what I was told by a representative at Kinko's.

Also, your letter does not address a number of important subjects: when will we receive payment as ordered by Judge Martinez; when will we receive amended answers to interrogatories without objections; what, if anything, do you propose about depositions of the witnesses in Oregon? Simply put, as matters stand now, the Court has ordered us to continue to prepare this case for trial or other disposition. Depending on how Judge Martinez rules on the pending motion, these issues may be moot with the exception of the monetary terms previously awarded and any additional monetary sanctions awarded by the Court.

November 6, 2009 Gregory Cavagnaro Page 2 of 2

Nothing in this letter should be taken as our agreement that this offer to bring documents to us, contrary to the Court's Orders, is acceptable and resolves the issues raised in our pending motion for default and sanctions. This motion is noted for November 20, 2009 and even if we receive the documents, we would like Judge Martinez to rule on the motion at the earliest possible date.

If you have any questions about this letter, please contact me.

Sincerely,

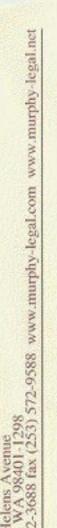
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GJM/lm

cc: Robin Kletke

Robin Cohen

# EXHIBIT C



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820 228th Ave NE			
badoule Wa 98077			

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\$48,5 \$3,7 \$3,7 \$5,7	Fees/Expenses Copies	\$105.50
\$3,2 invoice: \$3,2 \$5,7	SUMMARY OF TRUST ACCOUNT PAYMENTS**	38,997.50
invoice: \$3,2 \$5,7	Prior Balance:	\$3,244.15
26,7	Fees/Expenses paid in trust this invoice:	\$3,244.15
	Remaining Balance:	80.00
	TOTAL AMOUNT DUE THIS INVOICE	\$5,753.35

Case 2:08-cv-01768-RSM Document 79

Filed 04/02/2010 Page 14 of 33

SUMMARY OF CHARGES

Time Charges. Expenses.

Woodinville, WA 98077 16820 225th Ave NE

Robin Kletice Robin Kletke

Invoice to:

TOTAL AMOUNT DUE THIS INVOICE

Remaining Balance:

Prior Balance

P.O. Box 1298 Tacoma, WA 98401-1298 (253) 572-3688 fax (253) 572-9588 www.murphy-legal.com

OB364 Woodinville, WA 98077 16820 226th Ave NE Robin Kletke

02/28/09

SUMMARY OF CHARGES	Amount
Time Charges.	\$26,384.00
Expenses.	\$411.58
	\$26,795.58
SUMMARY OF TRUST ACCOUNT PAYMENTS**	
Prior Balance:	\$0.00
Fees/Expenses paid in trust this invoice:	\$0.00
Remaining Balance:	\$0.00
TOTAL AMOUNT DUE THIS INVOICE	\$26,795.58

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SUMMARY OF CHARGES	Amount
Time Charges.	\$16,440.00
Expenses.	\$389.31
Expenses. Copies	\$102.00
Expenses. Postage	\$2.10
Expenses. LoisLaw Research	\$70.00
SUMMARY OF TRUST ACCOUNT PAYMENTS**	\$17,003.41
Prior Balance:	\$26,795.58
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Woodinville, WA, 98077			
SUMMARY OF CHARGES			Amount
Time Charges.			\$4,319.00
Expenses.			\$318.54
SUMMARY OF TRUST ACCOUNT PAYMENTS**			\$4,637.54
Prior Balance:			\$10,000.00
Fees/Expenses paid in trust this invoice:			\$4,637.54
Remaining Balance:			\$5,362.46

TOTAL AMOUNT DUE THIS INVOICE

Ave., Suite 15 A 98401-1298 3688 fax (253) 572-9588 www.murphy-legal.com

PAID" 05/31/09 Invoice # QB375

Woodinville, WA 98077 16820 226th Ave NE Robin Klotke Involce to:

\$317.10 \$7,887.10 \$2,112.90 \$0.00 \$7,887.10 \$10,000.00 \$7,570.00 SUMMARY OF TRUST ACCOUNT PAYMENTS\*\* Fees/Expenses paid in trust this invoice: TOTAL AMOUNT DUE THIS INVOICE SUMMARY OF CHARGES Remaining Balance: Prior Balance: Time Charges. Expenses.

53) 572-9588 www.murphy-legal.com

	TO COURT
Robin Kletice	
16820 226th Ave NE	
Woodinitle, WA 98077	

60/06/30

SUMMARY OF CHARGES	Amount
Time Charges.	\$3,728.00
SUMMARY OF TRUST ACCOUNT PAYMENTS**	\$3,741.50
Prior Balance:	\$10,000.00
Fees/Expenses paid in trust this invoice:	\$3,741.50
Remaining Balance:	\$6,258.50
TOTAL AMOUNT DUE THIS INVOICE	80.00



Robin Kletke		- Company	Amount
	QB385	07/31/09	PAID**
18820 228th Ave NE			
Woodrville, WA, 98077			

SUMMARY OF CHARGES	Amount
Time Charges.	\$2,979.00
SUMMARY OF TRUST ACCOUNT PAYMENTS**	\$2,979.00
Prior Balance:	\$10,000.00
Fees/Expenses paid in trust this involce:	\$2,979.00
Remaining Balance:	\$7,021.00
TOTAL AMOUNT DUE THIS INVOICE	80.00

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Law Offices of Gregory J. Murphy P.S.

Law Office Gregory J.

Robin Kletke         QB389         08/31/09         PAID**           16820 226th Ave NE         Weddinville, WA 98077         Vedinville, WA 98077         Ve	Involce to:	Involce #	Date	Amount Due
16820 226th Ave NE Woodinville, WA 98077	Robin Kletke	OB389	08/31/09	PAID"
	16820 2268h Ave NE Woodinville, WA 98077			

SUMMARY OF CHARGES	Amo
Time Charges. Expenses.	\$457
SUMMARY OF TRUST ACCOUNT PAYMENTS**	\$509
Prior Balance: Fees/Expenses paid in trust this invoice: Remaining Balance:	\$10,000 \$509
TOTAL AMOUNT DUE THIS INVOICE	0\$

572-9588 www.murphy-legal.com

Involce to:	Invoice #	Date	Amount Due
Robin Kletke		10/02/09	PAID**
16820 226th Ave NE Woodnville, WA 98077			

	SUMMARY OF CHARGES	Amount
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O)	Expenses.	\$11.50
S		\$3,772.50
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	Prior Balance:	\$10,000.00
	Fees/Expenses paid in trust this invoice:	\$3,772.50
**************************************	Remaining Balance:	\$6,227.50
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Law Offices of Gregory J. Murphy

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	Woodinville, WA 98077

10/31/09

SUMMARY OF CHARGES	Amount
Time Charges.	87,896.00
SUMMARY OF TRUST ACCOUNT PAYMENTS**	87,896.00
Prior Balance:	\$10,000.00
Fees/Expenses paid in trust this invoice:	\$7,896.00
Remaining Balance:	\$2,104.00
TOTAL AMOUNT DUE THIS INVOICE	\$0.00

Involce to:	Invoice #	Date	Amount Due
Robin Kletke	OB404	12/02/09	PAID**
16520 226th Ave NE			
Woodmville, WA 98077			

SUMMARY OF CHARGES	Amount
Time Charges. Expenses.	\$8,081.00
SUMMARY OF TRUST ACCOUNT PAYMENTS**	\$8,098.50
Prior Balance: Fees/Expenses paid in trust this involce: Remaining Balance:	\$10,000.00 \$8,098.50 \$1,901.50
TOTAL AMOUNT DUE THIS INVOICE	\$0.00

Invoice to:	Invoice #	Date
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16820 226th Ave NE Vicodin/lile, V/A 98077		

Time Charges.  Expenses.  SUMMARY OF TRUST ACCOUNT PAYMENTS**  Prior Balance: Fees/Expenses paid in trust this invoice: Remaining Balance: Remaining Balance: S1,901.4 S0.6	SUMMARY OF CHARGES	Amount
	Time Charges.	\$15,062.00
	Expenses.	\$212.25
	SUMMARY OF TRUST ACCOUNT PAYMENTS***	\$15,274.25
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	Fees/Expenses paid in trust this invoice:	\$1,901.50
	Remaining Balance:	\$0.00
TOTAL AMOUNT DUE THIS INVOICE \$13,372.7	TOTAL AMOUNT DUE THIS INVOICE	\$13,372.75

Invoice to:	Robin Kletke	15820 226th Ave NE Woodswile, WA 98077	

Amount Due	\$12,207.25
Date	02/01/10
Invoice #	QB411

Time Charges. Expenses.	
	\$12,230.00
SUMMARY OF TRUST ACCOUNT PAYMENTS™	\$12,334.50
Prior Balance:	\$127.25
Remaining Balance:	\$0.00
TOTAL AMOUNT DUE THIS INVOICE	\$12,207.25

SUMMARY OF CHARGES

Time Charges.

Expenses.

SUMMARY OF TRUST ACCOUNT PAYMENTS\*\*

Prior Balance:

Fees/Expenses paid in trust this invoice.

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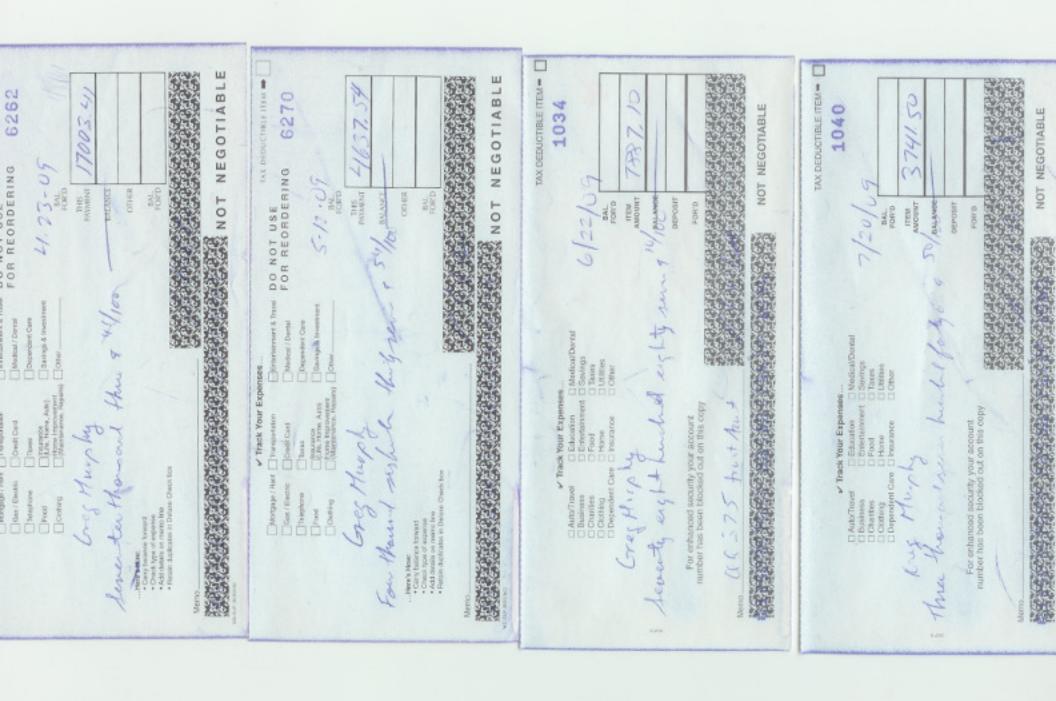
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Page 28 of 33

# EXHIBIT D

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